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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,896	03/30/2006	Gregory Yelland	671096.404USPC	6246
500 7590 01/04/2008 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104			EXAMINER SZMAL, BRIAN SCOTT	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 01/04/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,896

Applicant(s)

YELLAND ET AL.

Examiner

Brian Szmaj

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/06</u> | 6) <input type="checkbox"/> Other: ____ |

Specification

1. The abstract of the disclosure is objected to because the abstract exceeds 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Bachman (4,241,942).

Bachman discloses a secure contest card and further discloses a mask for masking a visual stimulus comprising an image having a plurality of curved lines. See Figure 6; and Column 2, lines 10-27.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 9, 10, 12-16, 18-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) in view of de Lemos (2007/0265507 A1).

Polat et al disclose a means for measuring a user's perception of a visual stimulus and further disclose presenting a visual test to the user for a predetermined stimulus exposure duration; measuring a response from the user, the response providing information about the user's perception of the test stimulus and a response time; repeating the application of the test stimulus and measuring a response thereto to develop a user profile; comparing the user profile to a reference profile to assess cognitive impairment in the user; the data obtained from a reference group comprises normal individuals; the user has a choice of two different responses for responding to each stimulus; one of two or more different stimuli are presented to the user; measuring the response includes acquiring either a correct or an incorrect indication of the visual stimulus; and the output can comprise graphs and curves. See Column 5, lines 3-7 and 21-23; Column 6, lines 1-17; Column 9, lines 22-30; and Column 12, lines 33-57.

Polat et al however fail to disclose masking the stimulus; repeating the stimulus for a range of durations; presenting a focal point to the user before presenting the stimulus to the user; calculating for each stimulus duration an error rate; an error rate curve for the user; repetitions of the stimulus exposure are separated by a uniform time interval; and the mask comprises at least one filled circle.

de Lemos discloses a visual stimulus detection means and further discloses masking the stimulus; repeating the stimulus for a range of durations; presenting a focal

point to the user before presenting the stimulus to the user; calculating for each stimulus duration an error rate; an error rate curve for the user; repetitions of the stimulus exposure are separated by a uniform time interval; and the mask comprises at least one filled circle. See Paragraphs 0035, 0051, 0053, 0057, 0067 and 0068.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the means of Polat et al to include the use of a mask, as per the teachings of de Lemos, since it would provide a means of controlling the exposure of the stimulus to the user, in order to obtain an accurate measurement of a response time. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a mean error rate, since de Lemos provides a means for detecting the error rate after the stimulus has been applied to the user, which would constitute an average or mean measurement. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to display each stimulus an equal number of times, since it would provide a means of acquiring an accurate diagnosis of an impairment being experienced by the user.

6. Claims 7, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and de Lemos (2007/0265507 A1) as applied to claim 1 above, and further in view of Rootzen et al (5,381,195).

Polat et al and de Lemos, as discussed above, disclose a means of measuring a response time to an applied visual stimulus and providing an output in the form of a graph, but fail to disclose calculating a mean response time; and the stimulus has an exposure duration between 10ms and 300ms.

Rootzen et al disclose a means for testing a user's perception and further disclose calculating a mean response time; and the stimulus has an exposure duration between 10ms and 300ms. See Column 5, lines 59-60; and Column 6, lines 21-41.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and de Lemos, to include calculating a means response time and a stimulus exposure duration, as per the teachings of Rootzen et al, since it would provide a means of accurately determining the attention of the user, to determine whether the user is impaired.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polat et al (6,876,758 B1) and de Lemos (2007/0265507 A1) as applied to claim 1 above, and further in view of Bachman (4,241,942).

Polat et al and de Lemos, as discussed above, disclose a means of measuring a response time to an applied visual stimulus but fail to disclose the mask comprises a plurality of curved lines.

Bachman, as discussed above, discloses a means for masking a visual stimulus and further discloses a mask having a plurality of curved lines. See Figure 6; and Column 2, lines 10-27.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Polat et al and de Lemos, to include the use of a mask having a plurality of lines, since it is well known in the art to utilize various types of masks during a visual test, including straight lines as well as curved lines.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmalec whose telephone number is (571) 272-4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian Szmalec
AU 3736